

United States District Court
Eastern District of California

Francisco Herra Lopez,

Plaintiff,

vs.

R. Franco, et al.,

Defendants.

No. Civ. S 05-0290 MCE PAN P

Order

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Plaintiff is a state prisoner without counsel prosecuting a civil rights action. He seeks leave to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff's declaration makes the showing required by 28 U.S.C. § 1915(a)(1) and (2).

Pursuant to 28 U.S.C. § 1915(b)(1), plaintiff must pay the \$250 filing fee required by 28 U.S.C. § 1914(a). Plaintiff must make monthly payments of 20 percent of the preceding month's

1 income credited to his trust fund account. 28 U.S.C. §
2 1915(b)(2). The agency having custody of plaintiff shall forward
3 payments from plaintiff's account to the clerk of the court each
4 time the amount in the account exceeds \$10 until the filing fee
5 is paid.

6 I have reviewed plaintiff's complaint pursuant to 28 U.S.C.
7 § 1915A and find it does not state a cognizable claim against any
8 defendant. The complaint is dismissed with leave to amend.

9 Any amended complaint must show the federal court has
10 jurisdiction and that plaintiff's action is brought in the right
11 place, that plaintiff is entitled to relief if plaintiff's
12 allegations are true, and must contain a request for particular
13 relief. Plaintiff must identify as a defendant only persons who
14 personally participated in a substantial way in depriving
15 plaintiff of a federal constitutional right. Johnson v. Duffy,
16 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to
17 the deprivation of a constitutional right if he does an act,
18 participates in another's act or omits to perform an act he is
19 legally required to do that causes the alleged deprivation). If
20 plaintiff contends he was the victim of a conspiracy, he must
21 identify the participants and allege their agreement to deprive
22 him of a specific federal constitutional right.

23 In an amended complaint, the allegations must be set forth
24 in numbered paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may
25 join multiple claims if they are all against a single defendant.
26 Fed. R. Civ. P. 18(a). If plaintiff has more than one claim

1 based upon separate transactions or occurrences, the claims must
2 be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

3 The federal rules contemplate brevity. See Galbraith v.
4 County of Santa Clara, 307 F.3d 1119, 1125 (9th Cir. 2002)
5 (noting that "nearly all of the circuits have now disapproved any
6 heightened pleading standard in cases other than those governed
7 by Rule 9(b)."); Fed. R. Civ. P. 84; cf. Rule 9(b) (setting forth
8 rare exceptions to simplified pleading).

9 Plaintiff's claims must be set forth in short and plain
10 terms, simply, concisely and directly. See Swierkiewicz v.
11 Sorema N.A., 534 U.S. 506, 514 (2002) ("Rule 8(a) is the starting
12 point of a simplified pleading system, which was adopted to focus
13 litigation on the merits of a claim."); Fed. R. Civ. P. 8.

14 Plaintiff must eliminate from plaintiff's pleading all
15 preambles, introductions, argument, speeches, explanations,
16 stories, griping, vouching, evidence, attempts to negate possible
17 defenses, summaries, and the like. McHenry v. Renne, 84 F.3d
18 1172 (9th Cir. 1996) (affirming dismissal of § 1983 complaint for
19 violation of Rule 8 after warning); see Crawford-El v. Britton,
20 523 U.S. 574, 597 (1998) (reiterating that "firm application of
21 the Federal Rules of Civil Procedure is fully warranted" in
22 prisoner cases).

23 A district court must construe pro se pleading "liberally"
24 to determine if it states a claim and, prior to dismissal, tell a
25 plaintiff of deficiencies in his complaint and give plaintiff an
26 opportunity to cure them. Noll v. Carlson, 809 F.2d 1446 (9th

1 Cir. 1986).

2 It is sufficient, for example, for a prisoner who claims he
3 has been discriminated against in violation of the Equal
4 Protection Clause of the Fourteenth Amendment to allege
5 identified defendants have discriminated against him based upon
6 his membership in a protected class. It appears plaintiff seeks
7 to challenge the decision to place him on lockdown solely because
8 of his race following gang-related violence. Plaintiff's
9 allegation defendants should have classified him as "other"
10 instead of "Hispanic" so plaintiff would not have been caught in
11 the class segregated for different treatment misses the mark.
12 The Equal Protection Clause is a command that government treat
13 all similarly situated people the same. It is not a command that
14 government accurately classify individuals to justify disparate
15 treatment.

16 The court (and defendant) should be able to read and
17 understand plaintiff's pleading within minutes. McHenry, supra.
18 A long, rambling pleading, including many defendants with
19 unexplained, tenuous or implausible connection to the alleged
20 constitutional injury or joining a series of unrelated claims
21 against many defendants very likely will result in delaying the
22 review required by 28 U.S.C. § 1915 and an order dismissing
23 plaintiff's action pursuant to Fed. R. Civ. P. 41 for violation
24 of these instructions.

25 An amended complaint must be complete in itself without
26 reference to any prior pleading. Local Rule 15-220; see Loux v.

1 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an
2 amended complaint, the original pleading is superseded.

3 Plaintiff is admonished that by signing an amended complaint
4 he certifies he has made reasonable inquiry and has evidentiary
5 support for his allegations and that for violation of this rule
6 the court may impose sanctions sufficient to deter repetition by
7 plaintiff or others. Fed. R. Civ. P. 11. Prison rules require
8 plaintiff to obey all laws, including this one, and plaintiff may
9 be punished by prison authorities for violation of the court's
10 rules and orders. See 15 Cal. Admin. Code § 3005.

11 Title 42 of the United States Code § 1997e(a) provides a
12 prisoner may bring no § 1983 action until he has exhausted such
13 administrative remedies as are available to him. The requirement
14 is mandatory. Booth v. Churner, 532 U.S. 731, 741 (2001).

15 Plaintiff is further admonished that by signing an amended
16 complaint he certifies his claims are warranted by existing law,
17 including the law that he exhaust administrative remedies, and
18 that for violation of this rule plaintiff risks dismissal of his
19 action.

20 Accordingly, the court hereby orders that:

21 1. Plaintiff's request to proceed in forma pauperis is
22 granted.

23 2. Plaintiff is obligated to pay the statutory filing fee
24 of \$250 for this action. The fee shall be collected in
25 accordance with the notice to the Director of the California
26 Department of Corrections filed concurrently herewith.

3. The complaint is dismissed with leave to amend within 45 days. Failure to file an amended complaint will result in a recommendation this action be dismissed for failure to state a claim. If plaintiff files an amended complaint stating a cognizable claim the court will proceed with service of process by the United States Marshal.

So ordered.

Dated: July 12, 2005.

/s/ Peter A. Nowinski

PETER A. NOWINSKI

Magistrate Judge